

Assembly Bill No. 839

Passed the Assembly September 3, 2009

Chief Clerk of the Assembly

Passed the Senate September 1, 2009

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2009, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 14043.28 and 14104.5 of the Welfare and Institutions Code, relating to Medi-Cal.

LEGISLATIVE COUNSEL'S DIGEST

AB 839, Emmerson. Medi-Cal: providers: remedies.

(1) Existing law establishes the Medi-Cal program, administered by the State Department of Health Care Services, under which basic health care services are provided to qualified low-income persons.

Existing law requires that health care providers apply to, and be certified by, the department prior to their participation in the Medi-Cal program.

Existing law allows the department, if specified conditions are met, to grant provisional provider status or preferred provisional provider status to an applicant or provider, and requires the department to terminate that status if any of specified grounds exist.

Existing law provides that, if an application for provisional provider status or preferred provisional provider status is denied under specified provisions, or that status is terminated under the provisions described above, the applicant or provider is prohibited from reapplying for enrollment or continued enrollment in the Medi-Cal program or for participation in any health care program administered by the department for a period of 3 years from the date the application package is denied or the provisional provider status is terminated, or from the date of the final decision following an appeal from that denial or termination, except as specified.

Existing law provides that, if an application for provisional provider status or preferred provisional provider status is denied based upon a conviction for specified offenses or acts, the applicant or provider is prohibited from reapplying for enrollment or continued enrollment in the Medi-Cal program or for participation in any health care program administered by the department for a period of 10 years from the date the application package is denied or the provisional provider status or preferred provisional provider

status is terminated, or from the date of the final decision following an appeal from that denial or termination.

This bill would delete the provisions that provide that the 3-year and 10-year prohibitions may begin from the date of the final decision following an appeal from that denial or termination.

(2) Existing law requires the Director of Health Care Services to adopt procedures for the review of grievances or complaints filed by Medi-Cal service providers concerning the processing or payment of money that the provider alleges is payable under the Medi-Cal program. A provider who complies with these procedures and is not satisfied with the director's decision regarding that claim may seek appropriate judicial remedies within a specified time period.

This bill would, instead, specify that the provider who has complied with these procedures may, within the time period prescribed in existing law, seek a writ of mandate.

(3) This bill would incorporate additional changes in Section 14043.28 of the Welfare and Institutions Code proposed by AB 1540, that would become operative only if AB 1540 and this bill are both chaptered and become effective on or before January 1, 2010, and this bill is chaptered last.

The people of the State of California do enact as follows:

SECTION 1. Section 14043.28 of the Welfare and Institutions Code is amended to read:

14043.28. (a) (1) If an application package is denied under Section 14043.26 or provisional provider status or preferred provisional provider status is terminated under Section 14043.27, the applicant or provider shall be prohibited from reapplying for enrollment or continued enrollment in the Medi-Cal program or for participation in any health care program administered by the department or its agents or contractors for a period of three years from the date the application package is denied or the provisional provider status is terminated, except as provided otherwise in paragraph (2) of subdivision (e), or paragraph (2) of subdivision (f), of Section 14043.26 and as set forth in this section.

(2) If the application is denied under paragraph (2) of subdivision (e) of Section 14043.26 because the applicant failed to resubmit an incomplete application package or is denied under

paragraph (2) of subdivision (f) of Section 14043.26 because the applicant failed to remediate discrepancies, the applicant may resubmit an application in accordance with paragraph (2) of subdivision (d) or paragraph (2) of subdivision (f), respectively.

(3) If the denial of the application package is based upon a conviction for any offense or for any act included in Section 14043.36 or termination of the provisional provider status or preferred provisional provider status is based upon a conviction for any offense or for any act included in paragraph (1) of subdivision (c) of Section 14043.27, the applicant or provider shall be prohibited from reapplying for enrollment or continued enrollment in the Medi-Cal program or for participation in any health care program administered by the department or its agents or contractors for a period of 10 years from the date the application package is denied or the provisional provider status or preferred provisional provider status is terminated.

(4) If the denial of the application package is based upon two or more convictions for any offense or for any two or more acts included in Section 14043.36 or termination of the provisional provider status or preferred provisional provider status is based upon two or more convictions for any offense or for any two acts included in paragraph (1) of subdivision (c) of Section 14043.27, the applicant or provider shall be permanently barred from enrollment or continued enrollment in the Medi-Cal program or for participation in any health care program administered by the department or its agents or contractors.

(5) The prohibition in paragraph (1) against reapplying for three years shall not apply if the denial of the application or termination of provisional provider status or preferred provisional provider status is based upon any of the following:

(A) The grounds provided for in paragraph (4), or subparagraph (B) of paragraph (7), of subdivision (c) of Section 14043.27.

(B) The grounds provided for in subdivision (d) of Section 14043.27, if the investigation is closed without any adverse action being taken.

(C) The grounds provided for in paragraph (6) of subdivision (c) of Section 14043.27. However, the department may deny reimbursement for claims submitted while the provider was noncompliant with CLIA.

(b) (1) If an application package is denied under subparagraph (A), (B), or (D) of paragraph (4) of subdivision (d) of Section 14043.26, or with respect to a provider described in subparagraph (B) of paragraph (2) of subdivision (e), or subparagraph (B) of paragraph (2) of subdivision (f), of Section 14043.26, or provisional provider status or preferred provisional provider status is terminated based upon any of the grounds stated in subparagraph (A) of paragraph (7), or paragraphs (1), (2), (3), (5), and (8) to (12), inclusive, of subdivision (c) of Section 14043.27, all business addresses of the applicant or provider shall be deactivated and the applicant or provider shall be removed from enrollment in the Medi-Cal program by operation of law.

(2) If the termination of provisional provider status is based upon the grounds stated in subdivision (d) of Section 14043.27 and the investigation is closed without any adverse action being taken, or is based upon the grounds in subparagraph (B) of paragraph (7) of subdivision (c) of Section 14043.27 and the applicant or provider obtains the appropriate license, permits, or approvals covering the period of provisional provider status, the termination taken pursuant to subdivision (c) of Section 14043.27 shall be rescinded, the previously deactivated provider numbers shall be reactivated, and the provider shall be reenrolled in the Medi-Cal program, unless there are other grounds for taking these actions.

(c) Claims that are submitted or caused to be submitted by an applicant or provider who has been suspended from the Medi-Cal program for any reason or who has had its provisional provider status terminated or had its application package for enrollment or continued enrollment denied and all business addresses deactivated may not be paid for services, goods, merchandise, or supplies rendered to Medi-Cal beneficiaries during the period of suspension or termination or after the date all business addresses are deactivated.

SEC. 1.5. Section 14043.28 of the Welfare and Institutions Code is amended to read:

14043.28. (a) (1) If an application package is denied under Section 14043.26 or provisional provider status or preferred provisional provider status is terminated under Section 14043.27, the applicant or provider shall be prohibited from reapplying for enrollment or continued enrollment in the Medi-Cal program or

for participation in any health care program administered by the department or its agents or contractors for a period of three years from the date the application package is denied or the provisional provider status is terminated, except as provided otherwise in paragraph (2) of subdivision (h), or paragraph (2) of subdivision (i), of Section 14043.26 and as set forth in this section.

(2) If the application is denied under paragraph (2) of subdivision (h) of Section 14043.26 because the applicant failed to resubmit an incomplete application package or is denied under paragraph (2) of subdivision (i) of Section 14043.26 because the applicant failed to remediate discrepancies, the applicant may resubmit an application in accordance with paragraph (2) of subdivision (h) or paragraph (2) of subdivision (i), respectively.

(3) If the denial of the application package is based upon a conviction for any offense or for any act included in Section 14043.36 or termination of the provisional provider status or preferred provisional provider status is based upon a conviction for any offense or for any act included in paragraph (1) of subdivision (c) of Section 14043.27, the applicant or provider shall be prohibited from reapplying for enrollment or continued enrollment in the Medi-Cal program or for participation in any health care program administered by the department or its agents or contractors for a period of 10 years from the date the application package is denied or the provisional provider status or preferred provisional provider status is terminated.

(4) If the denial of the application package is based upon two or more convictions for any offense or for any two or more acts included in Section 14043.36 or termination of the provisional provider status or preferred provisional provider status is based upon two or more convictions for any offense or for any two acts included in paragraph (1) of subdivision (c) of Section 14043.27, the applicant or provider shall be permanently barred from enrollment or continued enrollment in the Medi-Cal program or for participation in any health care program administered by the department or its agents or contractors.

(5) The prohibition in paragraph (1) against reapplying for three years shall not apply if the denial of the application or termination of provisional provider status or preferred provisional provider status is based upon any of the following:

(A) The grounds provided for in paragraph (4), or subparagraph (B) of paragraph (7), of subdivision (c) of Section 14043.27.

(B) The grounds provided for in subdivision (d) of Section 14043.27, if the investigation is closed without any adverse action being taken.

(C) The grounds provided for in paragraph (6) of subdivision (c) of Section 14043.27. However, the department may deny reimbursement for claims submitted while the provider was noncompliant with CLIA.

(b) (1) If an application package is denied under subparagraph (A), (B), or (D) of paragraph (4) of subdivision (f) of Section 14043.26, or with respect to a provider described in subparagraph (B) of paragraph (2) of subdivision (h), or subparagraph (B) of paragraph (2) of subdivision (i), of Section 14043.26, or provisional provider status or preferred provisional provider status is terminated based upon any of the grounds stated in subparagraph (A) of paragraph (7), or paragraphs (1), (2), (3), (5), and (8) to (12), inclusive, of subdivision (c) of Section 14043.27, all business addresses of the applicant or provider shall be deactivated and the applicant or provider shall be removed from enrollment in the Medi-Cal program by operation of law.

(2) If the termination of provisional provider status is based upon the grounds stated in subdivision (d) of Section 14043.27 and the investigation is closed without any adverse action being taken, or is based upon the grounds in subparagraph (B) of paragraph (7) of subdivision (c) of Section 14043.27 and the applicant or provider obtains the appropriate license, permits, or approvals covering the period of provisional provider status, the termination taken pursuant to subdivision (c) of Section 14043.27 shall be rescinded, the previously deactivated provider numbers shall be reactivated, and the provider shall be reenrolled in the Medi-Cal program, unless there are other grounds for taking these actions.

(c) Claims that are submitted or caused to be submitted by an applicant or provider who has been suspended from the Medi-Cal program for any reason or who has had its provisional provider status terminated or had its application package for enrollment or continued enrollment denied and all business addresses deactivated may not be paid for services, goods, merchandise, or supplies rendered to Medi-Cal beneficiaries during the period of suspension

or termination or after the date all business addresses are deactivated.

SEC. 2. Section 14104.5 of the Welfare and Institutions Code is amended to read:

14104.5. Notwithstanding any other provision of law, the director shall by regulation adopt such procedures as are necessary for the review of a grievance or complaint concerning the processing or payment of money alleged by a provider of services to be payable by reason of any of the provisions of this chapter. After complying with these procedures, if the provider is not satisfied with the director's decision on his or her claim, he or she may not later than one year after receiving notice of the decision, file a petition for writ of mandate pursuant to Section 1085 of the Code of Civil Procedure in the superior court. This section shall be the exclusive remedy available to the provider of services for moneys alleged to be payable by reason of this chapter.

This section shall not apply to those grievances or complaints arising from the findings of an audit or examination made by or on behalf of the director pursuant to Sections 10722 and 14170. Article 5.3 (commencing with Section 14170) shall govern the grievances or complaints.

SEC. 3. Section 1.5 of this bill incorporates amendments to Section 14043.28 of the Welfare and Institutions Code proposed by both this bill and AB 1540. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2010, (2) each bill amends Section 14043.28 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 1540, in which case Section 1 of this bill shall not become operative.

Approved _____, 2009

Governor